(6)

CT-2004

In the Hon'ble High Court of Judicature at Bilaspur (C.G.)

Writ Petition No. 2122/03 S.B.

Petitioners :- (1) Smt. Kamla Bai Aged about 52 years,
(Plaintiffs) Wd/o Medni Prasad, Hindu, Agriculturist.

(2) Jayant Kumar Aged about 12 years, Adopted son of Smt. Kamla Bai C/o Mother Kamla Bai Wd/o Medni Prasad (Through Guardian)
Both are Residents of Village Kablajhar
Tahsil Dabhra, P.O. Dabhra
District. Janjgir-Champa (C.G.)

P. R. No. 13254/03 Presented by Shri A.K. Gupta dated 24.6.03

Versus

Respondents:-(1) Smt. Chandrika Bai Aged about 65 years,
(Defendants) Wd/o Rohit Kumar

(2) Sanjit Kumar Aged about 50 years,
S/o Rohit Kumar

(3) Kanhaiyalal Aged about 41 years,
S/o Rohit Kumar

(4) Liladhar Aged about 37 years,
S/o Rohit Kumar

(5) Sushil Kumar Aged about 34 years,
S/o Rohit Kumar

उपखण्ड अधिकारी एच.के. शुक्ला पेन्ड्रारोड तहसील कोटा

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(7)

(6) Sudershan Aged about 32 years,
S/o Rohit Kumar

(7) Kirti Kumar Aged about 29 years,
S/o Rohit Kumar

(8) Yashwant Aged about 27 years,
S/o Rohit Kumar

(9) Neelam Aged about 25 years,
S/o Rohit Kuamr

All above are Hindu, Agriculturist, Residents of Village - Kanwalajhar, P.O. & Tahsil- Dabhra District - Janjgir-Champa (C.G.)

(10) State of Chhattisgarh (At the time of filing of the suit, State of M.P.) Through - Collector, Janjgir-Champa (C.G.)

Writ Petition under Article 226/227 of the Constitution of India

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2122/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक का	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	28-7-2003 Shri Akhil Agrawal, learned counsel for the petitioners. By this petition under Article 226/227 of the Constitution of India the petitioners have challenged the order dated 25-3-2003, passed by Civil Judge Class-II, Sakti, in Civil Suit No.635-A/2002. 2. The petitioners have filed this writ petition with the averment that petitioners/plaintiffs are separate from respondents/ defendants and had no concern even with late Medni Prasad. 3. Late Anandram divided his entire undivided and divided properties during his lifetime in the year 1971 among his sons. The partition deed dated 11-12-1971 was executed and registered by him, which is annexed with the petition as Annexure P-3. 4. Some dispute regarding the said properties arose between both the parties after the death of late Anandram. Thereafter they compromised for it and the partition deed dated 11-12-1971,	

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मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	was executed by the share holders, and land was separately mutated in their respective names. They started living separately and earning separately from these properties. 5. After the death of late Medni Kumar, the petitioner/plaintiff No.1 is in exclusive possession of the suit properties. Late Medni Kumar was sick and ill before his death and for one year he was very serious and he was shifted to so many hospitals. In his treatment, huge expenditure was incurred and due to this, he had borrowed the loans. 6. After his death some loan was also required to perform his funeral and customary expenses and for all this 1.65 acres of land was sold to the different persons by registered sale deed and the purchasers are in possession of that land. The rest of the lands, which is described in the list A & B annexed with the plaint, are in the possession of the petitioner No.1.	

G:PRJ—FS/350—12/2000—50,000.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. 2122/B

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. When the petitioner No.1 went to Halka Patwari after the death of late Medni Kumar, she came to know that the respondents No. 1 to 9 got mutated their names over the suit properties for which the respondents No.1 to 9 do not have any right or title over the said property.

8. The petitioner No.1 approached the Revenue Court, Sub Divisional Officer, Sakti, who passed the order dated 12-7-1999 and dismissed the appeal as barred by limitation. Against the order passed by the Sub Divisional Officer the petitioner preferred an appeal before the Additional Commissioner, Bilaspur, which is pending for its final hearing.

9. The order dated 27-1-1999, passed by the Gram Panchayat, Kanwlajhar is absolutely false, erroneous, illegal and contrary to law. It was baseless. The endorsement dated 11-1-1999, by the Gram Panchayat vide order dated 27-1-1999, no proclamation of the publication was made, no notice was sent by the Gram Panchayat to

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मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the petitioner No.1, the said mutation was done without any knowledge and by giving receipt to the petitioners.

10. The said mutation was took place by a forged and false deed dated 3-9-1998. The respondent in the written statement took a very false plea that respondent No.2 was adopted in the year 1966 by late Medni Kumar. This plea is absolutely false and vague. The petitioner No.1 never comes to know about the alleged adoption. No function or ceremony took place for it nor the petitioner No.1, gave any consent for the alleged adoption in the year 1966 of respondent No.2.

11. There is no dispute about the identity of the suit property in question nor there is any suit relating to house. In view of the impugned order dated 25-3-2003, the respondents No. 1 to 9 are creating harassment and undue pressure to the petitioners, who are helpless, they can be deprived of their own share of property due to unlawful acts of the respondents as stated in para 4 of the petition.

GR PRJ—FS/350—12/2000—50,000.

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मामला क्रमांक W.P. 2122/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The collection of evidence unnecessarily is not permissible under the provisions of law and when there is no dispute about the identity of the suit property, which is apparent by the documents itself filed in the Court below, and ultimately it has been prayed that the impugned order dated 25-3-2003, be quashed.

12. I have perused the plaint and written statement filed before the Court below and the impugned order dated 25-3-2003, by which the learned Civil Judge observed that it is true that no relief has been sought regarding the house but the land bearing Khasra No.569 is the disputed land. In order to ascertain whether the valuation of the suit property has been done or not and whether any party wants to take relief without paying Court fee exercised the inherent power under Section 151 of the Code of Civil Procedure appointed the Tahsildar, Dhabhra, as Commissioner, and directed that after inspecting the site to give the report on the following point.

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मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

13. Whether any house is existing or not on the land bearing Khasara No.569 and to prepare the site plan of Khasara No.569 according to the factual position on the ground. Situation of

14. I have heard learned counsel for the petitioner.

15. The Hon'ble Apex Court in the matter of [redacted] *Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors.* Reported in Judgment Today 2003(4) SC Page 605, has held that :-

> *"Under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".*

GI.PRJ—FS/350—12/2000—50,000.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2124/03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	16. This writ petition has been filed under Article 227 of the Constitution of India against the order of Civil Judge. Section 115 of the old Civil Procedure Code has been amended and the revisional powers of the High Court under that Section against the order of the Civil Court has been amended and to a great extent reduced. 17. In view of the law laid down by the Hon'ble Apex Court, if we look into the present case, the learned Civil Judge has specifically mentioned that the revenue land bearing Khasara No.569 is in dispute in the subject matter before that Court. In order to ascertain the factual position of that land, the Court has appointed the Tahsildar as Commissioner to prepare a report based on the ground and submit it to the Court and also as to whether any house is existing or not on the said land. 18. The Court has specifically mentioned that it will look into the matter as to whether the plaintiff has tried to under value the	

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मामला क्रमांक W.P. 2124/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

subject matter in order to ~~unable~~ enable the petitioner/plaintiff not to pay the requisite Court fee.

19. Therefore, I do not find any illegality or infirmity in the order of the trial Court which may require this Court to exercise extraordinary jurisdiction under Article 227 of the Constitution of India. This is not an exceptional case in which if the order passed is allowed to be existed the petitioners are going to suffer any irreparable injury and any prejudice will be caused to the petitioner against which the petitioner will have no remedy.

20. In view of the above, I am of the opinion that this writ petition is misconceived, same is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C. Bhadoo
Judge